

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Public Service Company of New Mexico

Docket Nos. ER96-1551-007
ER69-1551-008
ER96-1551-009
ER01-615-004
ER01-615-005
ER01-615-006
EL05-2-000

ORDER ON UPDATED MARKET POWER ANALYSIS, INSTITUTING SECTION
206 PROCEEDING AND ESTABLISHING REFUND EFFECTIVE DATE

(Issued December 20, 2004)

1. On August 11, 2004, as supplemented on October 7, 2004, and amended on November 19, 2004, Public Service Company of New Mexico (PNM) submitted for filing (compliance filing) an updated generation market power analysis pursuant to the Commission's order issued on May 13, 2004.¹ The May 13 Order addressed the procedures for implementing the generation market power screens announced on April 14, 2004 and clarified on July 8, 2004.²
2. The compliance filing, as amended, indicates that PNM passes the pivotal supplier screen in all markets considered but that it fails the wholesale market share screen for all four seasons in PNM's northern New Mexico control area (or PNM control area).³

¹ *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

² *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (2004) (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

³ PNM's analysis indicates market shares as high as 69.9 percent in its home control area.

3. As the Commission stated in the April 14 Order, where an applicant is found to have failed either generation market power screen, such failure provides the basis for instituting a proceeding under section 206 of the Federal Power Act (FPA)⁴ and establishes a rebuttable presumption of market power in the section 206 proceeding.⁵ Accordingly, as discussed below, in this order, the Commission institutes a proceeding pursuant to section 206 of the FPA to determine whether PNM may continue to charge market-based rates and establishes a refund effective date pursuant to the provisions of section 206. The instant section 206 proceeding, as well as any resulting mitigation or refunds, will address PNM's northern New Mexico control area because the compliance filing indicates that this is the geographic market for which PNM fails the wholesale market share screen. In addition, because the Commission is unable to validate the results of PNM's generation market power analysis in the El Paso control area, the 206 proceeding will address the El Paso control area as discussed in the body of this order.

4. This order, including the refund effective date, will protect customers from excessive rates and charges that may result from the exercise of market power.

Background

5. On March 26, 2001, as amended on March 27, 2001, PNM filed an updated market power analysis which utilized the hub-and-spoke analysis (March 2001 market power analysis).⁶ On March 24, 2004, PNM submitted a subsequent updated market power analysis using the Supply Margin Assessment (March 2004 market power analysis).⁷ PNM's revised market-based rate tariff incorporating the Commission's market behavior rules was previously accepted by the Commission.⁸

6. In the April 14 Order, as clarified by the July 8 Order, the Commission adopted two indicative screens for assessing generation market power: a pivotal supplier screen and a wholesale market share screen. The Commission stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess

⁴ 16 U.S.C. § 824e (2000).

⁵ April 14 Order, 107 FERC ¶ 61,018 at P 201.

⁶ Public Service Company of New Mexico, Docket No. ER96-1551-006.

⁷ Public Service Company of New Mexico, Docket No. ER01-615-003.

⁸ Public Service Company of New Mexico, 108 FERC ¶ 61, 092 (2004).

generation market power, while failure of either screen creates a rebuttable presumption that the applicant has generation market power. The Commission further stated that applicants and intervenors may, however, rebut the presumption established by the results of the initial screens by submitting a Delivered Price Test.⁹ Alternatively, an applicant may accept the presumption of market power or forego the generation market power analysis altogether and go directly to mitigation. The May 13 Order directed PNM to file, within ninety days of the issuance of that order generation market power analyses pursuant to these two indicative screens.¹⁰

7. On August 11, 2004, PNM filed an updated market power analysis in compliance with the Commission's May 13 Order (August 2004 filing).

8. On October 29, 2004, the Director, Division of Tariffs and Market Development – South, acting pursuant to delegated authority, issued a data request seeking additional information relating to PNM's submittals.

9. On November 19, 2004, PNM filed its response to the data request (November 19 response).

Description of PNM's Filing

10. In its compliance filing, PNM states that it fails the wholesale market share screen in the northern New Mexico control area. With respect to the northern New Mexico control area, PNM contends that its failure of the wholesale market share screen is not reflective of the actual competitive situation in this area because the only two relevant customers are fully resourced and because PNM's tariff gives customers the right to buy power from PNM at cost-based rates whenever the transmission path (Path 48) is constrained. With respect to the El Paso control area, PNM argues that it does not have generation market power in this control area because, among other things, the entire load in this control area can be met by imports over two transmission paths, and there is sufficient uncommitted capacity resources in the surrounding areas to meet load.

⁹ In addition, as the Commission stated in the April 14 Order, the applicant or intervenors may present evidence such as historical sales data to support whether the applicant does or does not possess market power. April 14 Order, 107 FERC ¶ 61,018 at P 37.

¹⁰ May 13 Order, 107 FERC ¶ 61,168 at Appendix A.

11. On October 7, 2004, PNM filed a supplement to its compliance filing (October 7 Supplement) to incorporate information to its analyses obtained from Arizona Public Service Company (APS) and El Paso Electric Company's (EPE) generation market power studies filed with the Commission on August 11, 2004. PNM states that it did not have access to this information at the time it submitted its first analyses and using this new information adjusted the two screens in the northern New Mexico and El Paso control areas. According to PNM, the supplement includes minor revisions to the data used in the first analyses. PNM concludes that it passes the wholesale market share screen in the El Paso control area when correcting for errors previously made, adjusting for current load served by Texas New Mexico Power Co. in the El Paso control area and recognizing current purchase levels under a contingent purchase contract with EPE.

12. In its November 19 response, PNM identifies its first-tier control areas as APS, EPE, Salt River Project (SRP), Southwestern Public Service Company (SPS), Tucson Electric Power Company (TEP), Western Area Power Administration Colorado-Missouri division (WACM), and Western Area Power Administration Lower Colorado (WALC).¹¹

Notice of Filing and Responsive Pleadings

13. Notice of PNM's March 2001 market power analysis was published in the *Federal Register*, 66 Fed. Reg. 18,463 (2001), with interventions or protests due on or before April 17, 2001. On April 17, 2001, Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) filed a motion to intervene and protest. On May 11, 2001, the County of Los Angeles (Los Angeles) filed a late motion to intervene and protest out of time. PG&E/Edison and Los Angeles state that, in light of the then current market conditions in the WSCC and California, PNM's revised market power study should be rejected because the hub-and-spoke analysis does not sufficiently measure the ability of sellers to exercise market power in California and the WSCC. PG&E/Edison and Los Angeles state that the Commission should limit PNM to cost-based wholesale rates until market conditions and market mitigation are sufficient to ensure workable competition and just and reasonable rates. On May 2, 2001, PNM filed an answer to PG&E/Edison's protest.

¹¹ In addition, PNM provided the wholesale market share screen and the pivotal supply screen for market areas other than its first-tier markets including: the Southern California Independent System Operator market (CAISO-S); Los Angeles Department of Water and Power (LDWP); Imperial Irrigation District (IID); Nevada Power Company (NEVP); PacifiCorp-East (PAC-East) and Utah Associated Power Systems (UAMPS) and; Public Service Company of Colorado (PSCO).

14. Notice of PNM's March 2004 market power analysis was published in the *Federal Register*, 69 Fed. Reg. 18,068 (2004), with interventions or protests due on or before April 14, 2004. None was filed.

15. Notice of PNM's August 2004 updated market power analysis was published in the *Federal Register*, 69 Fed. Reg. 52,005 (2004), with interventions or protests due on or before September 1, 2004. Timely motions to intervene were filed by EPE and Pinnacle West Capital Corporation, Arizona Public Service Company, Pinnacle West Energy Corporation, and APS Energy Services Company (collectively, the Pinnacle West Companies).

16. Notice of PNM's October 7, 2004 supplement to the revised market power analysis was published in the *Federal Register*, 69 Fed. Reg. 63,382 (2004), with interventions or protests due on or before October 21, 2004. None was filed.

17. Notice of PNM's November 19 response amendment was published in the *Federal Register*, 69 Fed. Reg. 69,596 (2004), with interventions or protests due on or before December 7, 2004. None was filed.

Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. The Commission is not persuaded to accept PNM's answer and will, therefore, reject it.

Discussion

Market-Based Rate Authorization

20. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and

transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.¹²

Generation Market Power

21. The Commission finds that the protests filed by PG&E/Edison and Los Angeles in response to PNM's March 2001 market power are moot. First, these protests concern the hub-and-spoke generation market power analysis, which has since been replaced by the methodology set forth in the April 14 and July 8 Orders. Second, they relate to conditions prevalent in the California market during 2001, which no longer exist.

22. PNM states in its compliance filing that PNM's market share of uncommitted capacity exceeds 20 percent in the PNM northern New Mexico control area for each of the four seasons during the time period considered. Consequently, PNM's compliance filing indicates that PNM fails the wholesale market share screen in PNM's northern New Mexico control area.

23. To rebut the presumption of market power established by its failure of the wholesale market share screen in the northern New Mexico control area, PNM states that it should retain market-based rate authority because market power could arise only when transmission constraints on Path 48 prevent customers from importing power from outside this control area. PNM asserts that, in such circumstances, its tariff already provides that it is required to charge cost-based rates to affected customers.¹³

24. The Commission finds that the mitigation in the tariff is not sufficient to rebut the presumption of market power as indicated by PNM's failure of the wholesale market share screen. The wholesale market share screen, conducted using simultaneous import capability, shows market shares well above 20 percent in all seasons, even when Path 48

¹² See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,921-22 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899-900 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

¹³ When PNM originally filed for market-based rate authority Plains Electric Generation & Transmission Cooperative (*Plains*) protested the application and the Commission set the application for hearing in *Public Service Company of New Mexico*, 75 FERC ¶ 61,266 (1996). The parties to the proceeding reached settlement and the Commission approved the settlement by letter order dated April 6, 1999 in *Public Service Company of New Mexico*, 87 FERC ¶ 61, 040 (1999). As part of the settlement PNM adopted the cost-based provision in its tariff.

is not binding. Mitigation that is triggered only when constraints are binding would not address the market power indicated at the lower flow levels in the wholesale market share screen. The July 8 Order states that the market share analysis addresses the potential for applicants to exercise market power during non-peak conditions by measuring applicants' share of uncommitted capacity available to the wholesale market at those times.¹⁴ Further, electricity is traded even during non-peak times, and this screen determines whether an applicant is a dominant supplier in the market during non-peak times and addresses the potential to exploit its position in the market during these times.¹⁵

25. The Commission's preliminary analysis indicates that PNM's argument that there are enough uncommitted capacity resources in the surrounding areas to meet load is not sufficient to rebut the presumption of market power. Nevertheless, the Commission will further examine this argument in conjunction with other evidence submitted in the section 206 proceeding instituted herein.

26. With respect to the El Paso control area, the Commission is not convinced that PNM accounted for imports in compliance with the methodology set forth in April 14 and July 8 Orders. Specifically, the Commission's analysis has determined that PNM may have understated the amount that PNM can import from its home control area, which is directly-interconnected to the El Paso control area, insofar as PNM did not include uncommitted capacity from its home control area, contrary to the instructions in the April 14 Order.¹⁶ The Commission is not persuaded that PNM's simplifying assumptions are in fact conservative assumptions that do not affect the underlying methodology of the screens because their effect is to understate PNM's share of import capability and overstate that of its competitors. PNM has not offered any explanation of why it has not included as uncommitted capacity imports from its home control area or why its approach would not distort the results of the wholesale market share screen. Furthermore, in calculating uncommitted capacity available to the El Paso control area, PNM erroneously included simultaneous import capacity from control areas¹⁷ that are not directly interconnected to the El Paso control area, contrary to the instructions in the April 14 Order, which stated that only those control areas directly interconnected with the control

¹⁴ July 8 Order, 108 FERC ¶ 61,026 at P 90.

¹⁵ July 8 Order, 108 FERC ¶ 61,026 at P 91.

¹⁶ April 14 Order, 107 FERC ¶ 61,018 at P 73.

¹⁷ Including: Southern Nevada, Southern California ISO Market (CAISO-S), and PacifiCorp-East (PAC-E).

area being analyzed should be included in calculations of simultaneous transmission import capacity.¹⁸ The Commission's preliminary analysis of PNM's submittal indicates that if PNM's calculations were performed as required by the April 14 Order, PNM could fail the market share screen in the El Paso control area for all seasons.

27. As outlined in the April 14 Order, failure of either screen provides the basis for instituting a section 206 proceeding and establishes a rebuttable presumption of market power in that proceeding. Consequently, in this order, the Commission institutes a section 206 proceeding to determine whether PNM may continue to charge market-based rates in the northern New Mexico control area. In addition, because PNM's treatment of imports and its simultaneous import capability study for the El Paso control area do not comply with the July 8 and April 14 Orders, this order also institutes a section 206 proceeding to determine whether PNM may continue to charge market-based rates in the El Paso control area. The Commission's decision to institute the instant section 206 proceeding does not constitute a definitive finding by the Commission that PNM has market power. As discussed in the April 14 and July 8 Orders, the screens are conservatively designed to identify the subset of applicants who require closer scrutiny.

28. Accordingly, for the northern New Mexico and El Paso control areas, PNM will have 60 days from the date of issuance of this order finding a screen failure for the PNM home control area and finding non-compliance in performance of the screens in the El Paso control area to: (1) file a Delivered Price Test analysis; (2) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that it will adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.¹⁹ Alternatively, PNM may choose to file revised generation market power screens²⁰ and a simultaneous transmission import capability study for the El Paso control area, which complies with the requirements of Appendix E of the April 14 Order. In addition, as the Commission stated in the April 14 Order,²¹ the applicant or intervenors

¹⁸ April 14 Order, 107 FERC ¶ 61,018 at P 73.

¹⁹ April 14 Order, 107 FERC ¶ 61,018 at P 201, 207-209.

²⁰ PNM is reminded that uncommitted capacity is determined by using nameplate capacity rather than seasonal capacity when conducting the indicative screens. April 14 Order, 107 FERC ¶ 61, 018 at P 95.

²¹ April 14 Order, 107 FERC ¶ 61,018 at P 37.

may present evidence such as historical sales data to support whether the applicant does or does not possess market power.

29. The instant 206 proceeding will address only the issue of whether PNM's has the potential to exercise generation market power in the northern New Mexico and El Paso control areas. The compliance filing indicates that, other than in the PNM or El Paso control areas, PNM passes the pivotal supplier screen and the wholesale market share screen in each of the directly interconnected first-tier control areas examined.

30. This order also establishes a refund effective date in order to put in place the necessary procedural framework to promptly impose an effective remedy, in case the Commission determines that such a remedy is required. Our decision to establish a refund effective date does not constitute a determination that refunds will be ordered.

31. In cases where, as here, the Commission institutes a section 206 proceeding on its own motion, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of notice of the initiation of the Commission's proceeding in the Federal Register, and no later than five months subsequent to the expiration of the 60-day period. In order to give maximum protection to customers, and consistent with Commission precedent,²² the Commission will establish a refund effective date at the earliest date allowed. This date will be 60 days from the date on which notice of the initiation of the proceeding in Docket No. EL05-2-000 is published in the Federal Register. In addition, section 206 requires that, if no final decision has been rendered by that date, the Commission must provide its estimate as to when it reasonably expects to make such a decision. Given the times for filing identified in this order, and the nature and complexity of the matters to be resolved, the Commission estimates that it will be able to reach a final decision by April 29, 2005.

Transmission Market Power

32. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility to have an open access transmission tariff (OATT) on file before granting such authorization. PNM states that it has an OATT on file with the Commission. The Commission notes that PNM's OATT was approved by Commission order.²³ Further, no intervenor raises transmission market power concerns.

²² See, e.g., *Canal Electric Company*, 46 FERC ¶ 61,153 (1989), *reh'g denied*, 47 FERC ¶ 61,275 (1989).

²³ *Public Service Company of New Mexico*, 75 FERC ¶ 61, 266 (1996).

Based on PNM's representations, the Commission finds that PNM satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

Other Barriers to Entry

33. PNM states that it does not control fuel supplies or fuel transport facilities. PNM notes that, although its gas division owns facilities for the transportation and distribution of natural gas, it must provide open access to these transportation facilities pursuant to New Mexico state law and subject to oversight by the New Mexico Public Regulatory Commission. PNM states that it does not have ability to limit entry by controlling potential sites for generating plants. PNM states that it owns an interest in an unused generation site, and does not own or control any suppliers of electric generating equipment. Further, no intervenor raised concerns regarding barriers to entry.

34. Based on PNM's representations, the Commission finds that PNM cannot erect barriers to entry. However, should PNM or any of its affiliates deny, delay or require unreasonable terms, conditions, or rates for natural gas service to a potential electric competitor in bulk power markets, that electric competitor may file a complaint with the Commission that could result in the suspension of PNM's authority to sell power at market-based rates.²⁴

Affiliate Abuse/Reciprocal Dealing

35. PNM states that its tariff prohibits it from selling power to an affiliate with a franchised service territory without prior Commission authorization. PNM states that its tariff contains a code of conduct that would govern in the event that PNM acquires an affiliate that: (i) has been authorized by the Commission to engage in sales for resale of energy and capacity at market-based rates, and (ii) does not have any captive customers. PNM states that, while its proposed acquisition of TNP Enterprises Inc. (including its franchised public utility subsidiary, Texas-New Mexico Power Co. and its Texas retail electric service provider subsidiary, First Choice Power) is pending, it will treat these entities as affiliates of PNM, and thereafter if the acquisition is consummated. Further, no intervenor has raised affiliate abuse concerns. Based on these representations, the Commission finds that PNM satisfies the Commission's concerns with regard to affiliate abuse.

²⁴ See, e.g., *Louisville Gas & Electric Co.*, 61 FERC ¶ 61,016 (1993).

Reporting Requirements

36. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.²⁵ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.²⁶

37. With regard to reporting changes in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing, in a Notice of Proposed Rulemaking in Docket No. RM04-14-000, the Commission is proposing to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to establish a reporting obligation for changes in status that apply to public utilities authorized to make wholesale power sales in interstate commerce at market-based rates.²⁷ Accordingly, the change in status reporting obligation for PNM is subject to the outcome of the rulemaking.

²⁵ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/Electric/eqr/eqr.htm>.

²⁶ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

²⁷ *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, 69 Fed. Reg. 61,180 (Oct. 15, 2004), FERC Stats. & Regs. ¶ 32,576 (2004).

The Commission orders:

(A) PNM's updated market power analysis for all relevant markets not subject to the section 206 proceeding is hereby accepted for filing, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), the Commission hereby institutes a proceeding in Docket No. EL05-2-000 concerning the justness and reasonableness of PNM's market-based rates, as discussed in the body of this order.

(C) The Secretary shall promptly publish in the Federal Register a notice of the Commission's initiation of the proceeding under section 206 of the FPA in Docket No. EL05-2-000.

(D) The refund effective date established pursuant to section 206(b) of the FPA will be 60 days following publication in the Federal Register of the notice discussed in Ordering Paragraph (B) above.

(E) As discussed in the body of this order, PNM is directed, for the northern New Mexico control area, within 60 days from the date of issuance of this order, to either: (1) file a Delivered Price Test analysis; (2) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that it will adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.

(F) As discussed in the body of this order, PNM is directed, for the El Paso control area, within 60 days from the date of issuance of this order, to either: (1) file revised generation market power screens and simultaneous transmission import capability

study, which complies with the requirements of the April 14 Order; (2) file a Delivered Price Test analysis; (3) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (4) inform the Commission that it will adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.

By the Commission. Commissioner Kelliher dissenting in part with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Public Service Company of New Mexico

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EL05-2-000

(Issued December 20, 2004)

Joseph T. KELLIHER, Commissioner *dissenting in part*:

I dissent from the part of this order that institutes a proceeding under section 206 of the Federal Power Act¹ in Docket No. EL05-2-000 concerning the justness and reasonableness of Public Service Company of New Mexico's (PNM) continuing to charge market-based rates in the El Paso control area. In this order, the Commission does not find that PNM failed either indicative screen for the El Paso control area. Instead, the Commission finds that PNM improperly calculated simultaneous transmission import capability with respect to the El Paso control area. In essence, the Commission is initiating a section 206 proceeding and setting a refund effective date for failure to properly administer our new market power test, not for failure of this test. Significantly, the Commission does not find that PNM acted in bad faith by failing to properly administer our test. I would afford PNM another opportunity to properly calculate simultaneous transmission import capability for the El Paso control area. Accordingly, I would not, at this time, initiate a section 206 proceeding in Docket No. EL05-2-000 or take any additional actions related to the initiation of the section 206 proceeding with respect to PNM's continuing to charge market-based rates in the El Paso control area.

Joseph T. Kelliher

¹ 16 U.S.C. § 824e (2000).